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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

COMMERCIAL ARBITRATION PETITION NO. 33 OF 2017

West Coast Ventures (India) Pvt. Ltd. ... Petitioner.

V/s.

Organic Recycling Systems Pvt. Ltd. & Ors. ... Respondents.

Mr. Prathamesh Kamat with Mr. T.N. Tripathi and Ms. Sapana Rachure i/b. T.N. Tripathi & Co. for the Petitioner.

Mr. Kedar Wagle a/w. Mr. Sagar Wagle, Ms. Sayali Puri for the Respondents.

CORAM : N.M. Jamdar, J.

07 February, 2017.

Oral Order :-

Not on board. Taken on production board by way of praecipe.

2. By consent of parties taken up for disposal forthwith.

3. Though the learned Counsel for the parties have advanced various submissions relating to the quantum of fees for the

claim and the counter claim, I do not find it appropriate to enter into that arena. However, it appears from the order that is challenged by the Petitioner, that the arbitrators have construed the stand of the Petitioner as an absolute refusal to pay. The learned Counsel for the Petitioner, on instructions, submitted that it is not the stand of the Petitioner that the Petitioner is unwilling to share the burden and if reasonable fees as per the schedule is fixed by the arbitral tribunal, then the Petitioner is not averse to depositing the same. The learned Counsel for the Petitioner submitted that an impression may not be carried that the Petitioner is a recalcitrant party.

4. By the impugned order/award, the arbitral tribunal has disposed of the counter claim by forfeiting the right of the Petitioner to lodge a counter claim. To my mind, such a drastic step was not warranted. The counter claim could have been taken on record and subsequently it was open to the arbitrators not to grant any relief or not to entertain the same on the ground that the fees fixed have not been deposited. Forfeiting the right of the Petitioner to even lodge a counter claim is not mandated under the scheme of the Arbitration and Conciliation Act, 1996. The learned Counsel for the Respondents has not been able to show any such position of law. Therefore, it will have to be held that in view of the provisions of the Act of 1996, the Petitioner has a right to lodge a counter claim. It is always open to the arbitrators to fix the quantum of fees keeping in

mind the provisions of the Act and after giving an opportunity to the parties and upon failure of a party to pay, pass appropriate orders.

5. In view of this position, the order/award dated 29 November 2016 by which the right of the Petitioner to file a counter claim is forfeited, is set aside. The Petitioner has a right to lodge a counter claim, subject of course to the arbitral tribunal determining the fees as above and passing further orders depending on the stand taken by the Petitioner qua the fees so fixed.

6. The Arbitration Petition is accordingly disposed of.

(N.M. Jamdar, J.)